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State Constitutional Offices. Filling Vacancies In. Confirmation

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Ballot Title

STATE CONSTITUTIONAL OFFICES. FILLING VACANCIES IN. CONFIRMATION. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Requires confirmation by Legislature before Governor's appointees to fill vacancies in offices of Superintendent of Public Instruction, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General and on State Board of Equalization may take office. If Legislature does not act within 90 days of Governor's nomination and is at the end of such 90-day period not in recess, appointees may take office as if confirmed; if Legislature is then in recess, the 90-day period is extended to six days following reconvening of the Legislature. Financial impact: No direct state fiscal effect.

FINAL VOTE CAST BY LEGISLATURE ON ACA 94 (PROPOSITION 9)

Assembly—Ayes, 65
Noes, 3

Senate—Ayes, 27
Noes, 7

Analysis by Legislative Analyst**PROPOSAL:**

The State Constitution currently authorizes the Governor to fill vacancies in the offices of Lieutenant Governor, Attorney General, Secretary of State, Controller, Treasurer, Superintendent of Public Instruction and State Board of Equalization without approval of the Legislature.

This proposal would require the Governor's appointee to a vacancy in any of the above offices to be

approved by a majority of the Senate and Assembly. If the Senate and Assembly neither accept nor reject the person designated to the vacancy by the Governor within 90 days, the person automatically assumes office. In the event the 90-day period ends during a legislative recess, this deadline is extended until six days after the Legislature reconvenes.

FISCAL EFFECT:

This proposal has no direct state fiscal effect.

Study the Issues Carefully

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 94 (Statutes of 1976, Resolution Chapter 58) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE V

~~SEC~~ SEC. 5. (a) Unless the law otherwise provides, the Governor may fill a vacancy in office by appointment until a successor qualifies.

(b) *Whenever there is a vacancy in the office of the Superintendent of Public Instruction, the Lieutenant*

Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, the Governor shall nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly and who shall hold office for the balance of the unexpired term. In the event the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee shall take office as if he or she had been confirmed by a majority of the Senate and Assembly; provided, that if such 90-day period ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes.

Argument in Favor of Proposition 9

Proposition 9 requires that anyone nominated by the Governor to fill a vacancy in a constitutional office must be confirmed by a majority of the Senate and the Assembly. Such constitutional offices include the Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Superintendent of Public Instruction and members of the Board of Equalization. Requiring approval by elected representatives is consistent with the principle of checks and balances so basic to our system of government; it also will open the process of filling a vacancy to public examination and discussion.

These offices are normally filled by a vote of all the people, because the tasks they perform have a tremendous impact on the life of every Californian. Under current law, whenever these positions become vacant due to death or resignation, the Governor simply appoints an individual to take over. It seems only reasonable to require that an individual who might take office outside the election process be carefully considered by as wide a representation of the people as possible. The quickest and most economical way to do this is to submit the names of nominees to a vote of the people's representatives.

Proposition 9 is modeled after the XXVth

amendment of the U. S. Constitution, which provides that a nominee for the Office of Vice President must be approved by the Senate and House. The value of such an arrangement was evident in the case of both Gerald Ford and Nelson Rockefeller, who each assumed the vice-presidency with broad support after a full public disclosure of his record. A similar method of filling vacancies in California would ensure such continuity and lessen the chance that some Governor might someday appoint an individual to a vacancy for political advantage or patronage purposes.

Maintenance of a healthy balance between the executive and the legislative branches is a principle dating back to the Founding Fathers. Allowing one person alone to fill such an important office is a gross distortion of that principle. Our tradition demands that we correct this situation. Please vote in favor of Proposition 9. It's a needed reform that's long overdue.

BILL LOCKYER

*Member of the Assembly, 14th District
Chairman, Committee on Labor Relations*

BOB WILSON

*Member of the Assembly, 77th District
Chairman, Committee on Governmental Organization*

Rebuttal to Argument in Favor of Proposition 9

Proposition 9 is neither a check nor a balance system. Instead, it is a ticket for the Legislature to become politically involved in the Governor's appointments.

The Founding Fathers of this nation provided in the Constitution of the United States that the President shall have the power to fill vacancies without political pressures from Congress. In their deep wisdom, they feared the kind of politicking that would result if Congress became involved in confirming every presidential appointment.

Likewise, the Governor of California should not be required to play political games with the Legislature. The Governor is elected as the people's representative to fill vacancies when necessary. To remove that

authority and give it to the Legislature serves only the politicians and not the people of California. Legislative debates will result in the waste of time and tax dollars.

What does a *NO* vote on Proposition 9 mean? It means you want the Governor to be able to act in the people's best interest and not be a political puppet. A *NO* vote means you want a more efficient and less costly state government. A *NO* vote means you want more correct appointments for the benefit of the people rather than for the benefit of big politicians. Vote *NO* on Proposition 9.

MIKE D. ANTONOVICH

Member of the Assembly, 41st District

Argument Against Proposition 9

The passage of Proposition 9 would virtually tie the hands of any Governor elected to serve the people of California.

This amendment would require legislative approval of all Governor's appointments to fill vacancies in specific constitutional offices.

Present law authorizes the Governor to fill vacancies in the office of Secretary of State, Controller, Treasurer, or Attorney General for the balance of an unexpired term. No confirmation is required.

However, this legislation would, if approved by the people, amend the California Constitution to require confirmation by a majority of the Senate and Assembly membership of any appointment made by the Governor to fill a vacancy in the above offices, as well as the office of Superintendent of Public Instruction, or on the State Board of Equalization.

At first glance, this legislation might appear to be in the best interests of the people, as it calls for close inspection of Governor's appointments. In reality, however, Proposition 9 would prohibit our Governor from exercising his normal executive functions.

The passage of Proposition 9 would result in additional red tape, causing long delays in the filling of vacated positions in important state offices.

The Governor must be able to move with dispatch when a vacancy occurs in state government. To tie his hands on such a routine matter, one that is normally expediently dealt with, simply adds miles of red tape to an area heretofore untouched by bureaucratic meddling.

Proposition 9 would also result in a political football game between the Legislature and the Governor. As the Governor would be subject to the whims of either

the Senate or the Assembly, he could be rendered virtually powerless. The simple act of filling a vacancy could assume monstrous proportions if the Senate or Assembly could not reach agreement regarding a candidate that would be acceptable to both. Hence, the appointment could bounce back and forth between the Governor and Legislature, with each rejection involving more time wasted. In turn, the vacancy would remain unfilled and unproductive, while the Legislature becomes further embroiled in political maneuvering.

This amendment has serious consequences for any future Governor who does not happen to be a member of the same political party that controls the Senate or the Assembly.

If this situation were to occur, Proposition 9 would effectively prohibit the Governor from ever filling vacancies in specified constitutional offices. Again, political red tape would prohibit the Governor from performing the duties required of his office.

Proposition 9 does not provide for the needs of the people of California. It prohibits our Governor from filling vacancies with dispatch as they occur. Thus, this extra red tape would keep state government from running smoothly and efficiently.

Proposition 9 is a bad amendment; it clutters up our State Constitution with unnecessary bureaucratic procedures—unnecessary, unwarranted, and unwanted by our Governor. The Governor is elected by Californians to serve us all; we must not tie his hands with more red tape that would prohibit him from working on our behalf.

MIKE D. ANTONOVICH

Member of the Assembly, 41st District

Rebuttal to Argument Against Proposition 9

The opposition calls the filling of vacancies in our independent constitutional offices "routine". Replacing constitutional officers who vacate office due to death or resignation is hardly a "routine matter"; if this were the case, these officers should not be elected by the general public in the first place.

The opposition's repeated reference to "red tape" is a "red herring". The Senate currently confirms many gubernatorial appointees with no red tape and little delay, except the time demanded for thorough study. We can expect no less in the case of the more important constitutional offices.

The opposition fears political football games. Past experience indicates that such developments would be unlikely, as legislators consider review of appointments a serious responsibility. However, delay due to genuine disagreement on the qualifications of a candidate might occur. This would not render the Governor "entirely

powerless", as the opposition exaggerates. Business would continue as usual, with the tasks of the vacant office performed by the appropriate deputy. If the opposition truly fears political games, it should carefully consider the fact that the present system of appointment without confirmation offers an opportunity for tricky political footwork that would be impossible under a system of checks and balances.

Proposition 9 cuts out red tape, ties no one's hands, and keeps everyone honest. We need the guarantee of legislative review to prevent the very types of political abuse the opposition fears.

BILL LOCKYER

*Member of the Assembly, 14th District
Chairman, Committee on Labor Relations*

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